

## Bur. of Consumer Financial Protection

## § 1026.5

open-end credit transactions, closed-end credit transactions by mail or telephone under §1026.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and (ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instru-

ment securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

### Subpart B—Open-End Credit

#### § 1026.5 General disclosure requirements.

(a) *Form of disclosures—(1) General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, in a form that the consumer may keep, except that:

(A) The following disclosures need not be written: Disclosures under §1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under §1026.6(b)(2) and related disclosures of charges under §1026.9(c)(2)(iii)(B); disclosures under §1026.9(c)(2)(vi); disclosures under §1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under §1026.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under §1026.60; home-equity disclosures under §1026.40(d); the alternative summary billing-rights statement under §1026.9(a)(2); the credit and charge card renewal disclosures required under §1026.9(e); and the payment requirements under §1026.10(b), except as provided in §1026.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions

## § 1026.5

## 12 CFR Ch. X (1–13 Edition)

of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to §1026.40, the terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under §1026.7(a)(4) and for advertisements under §1026.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed*, or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of §1026.60(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclo-

tures and must be given in accordance with the requirements of §1026.40(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of §1026.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of §1026.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of §1026.7(b)(12).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of §1026.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of §1026.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of §1026.9(g)(3)(ii).

(b) *Time of disclosures*—(1) *Account-opening disclosures* (i)—*General rule.* The creditor shall furnish account-opening disclosures required by §1026.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under §1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of §1026.40.

(iii) *Telephone purchases.* Disclosures required by §1026.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an

## Bur. of Consumer Financial Protection

## § 1026.5

offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by §1026.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees*—(A) *General*. In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under §1026.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in §1026.60(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans*. Creditors offering home-equity plans subject to the requirements of §1026.40 are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees*. A creditor may collect an application fee excludable from the finance charge under §1026.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. See §1026.5(b)(1)(iv)(A).

(2) *Periodic statements*—(i) *Statement required*. The creditor shall mail or deliver a periodic statement as required

by §1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than \$1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate Federal law.

(ii) *Timing requirements*—(A) *Credit card accounts under an open-end (not home-secured) consumer credit plan*. For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(1) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to §1026.7(b)(11)(i)(A); and

(2) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) *Open-end consumer credit plans*. For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(1) If a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(ii) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(2) Regardless of whether a grace period applies to the account:

(i) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in

order to avoid being treated as late for any purpose; and

(ii) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(3) For purposes of paragraph (b)(2)(ii)(B) of this section, “grace period” means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 1026.60.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 1026.40(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan involves more than one creditor, only one set of disclosures shall be given, and the creditors shall agree among themselves which creditor must comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the account. If the right of rescission under § 1026.15 is applicable, however, the disclosures required by §§ 1026.6 and 1026.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this part, although new disclosures may be required under § 1026.9(c).

**§ 1026.6 Account-opening disclosures.**

(a) *Rules affecting home-equity plans.* The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of § 1026.40. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period’s expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: The circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in § 1026.40(d), as applicable: